

MEETING MINUTES
District of Columbia
Board of Ethics and Government Accountability
Monthly Meeting of the Board
March 14, 2013, at 1:00 pm
Hearing Room 540 South

AGENDA

I. Call to Order

The Monthly Meeting of the Board was called to order at 1:01 pm by Chairman Robert Spagnoletti in Hearing Room 540 South at One Judiciary Square, 441 4th Street NW, Washington, DC 20001.

II. Ascertainment of Quorum

Board members Robert Spagnoletti, Carol Schwartz, and Deborah Lathen, and were present constituting a quorum. Board member Lathen participated by telephone.

III. Adoption of the Agenda

IV. Report by the Director of Open Government

A. Performance Hearing/CBE Hearing

Our thanks to Chairman Spagnoletti for testifying on February 23rd on behalf of the Ethics Office and the Office of Open Government regarding BEGA performance oversight for Fiscal Years 2015 through 2016. Judiciary Committee Chairman McDuffie seemed generally supportive of both offices, and raised few questions regarding our operation and priorities for the remainder of the year.

I testified on March 9th before Chairman Orange's Committee on Business, Consumer, and Regulatory Affairs, regarding BEGA's compliance with Certified Business Enterprise Expenditure (CBE) Goals. No formal written testimony was required. Chairman Orange asked each agency to read onto the record BEGA's responses to his compliance questions which BEGA submitted on January 22nd. I testified on the record to two amounts that differed from BEGA's written responses: (1) BEGA's spending plan for the expendable budget has increased from \$54,725 to \$59,225. The additional \$4,000 is cost of printing the ethics manuals; and (2) BEGA's CBE expenditures for FY 2016 to current is \$69,387.53. The reported amount for the first quarter was \$487.53. The increase is due to pending requisitions for the build out of both office spaces in the amount of \$29,847.00 and an RFP in the amount of \$35,265.00 for the production of a public outreach video for the Ethics Office.

B. OMA Advisory Opinions

OOG has issued two advisory opinions since the last board meeting: (1) to the Sustainable Energy Utility Advisory Board regarding whether the board may enter into a closed session under the Open Meetings Act (OMA) to review draft RFPs; and (2) an OMA complaint opinion/demand letter issued to the DC Housing Authority Board. OOG found the board in violation of the OMA for failing to respond to a complaint notification in a timely manner. The General Counsel for the Housing Authority has reached out to me to explain why there was no response to the complaint notification, and now has until March 16 to supply the requested records.

Chairman Spagnoletti and Board Member Schwartz agree that an amendment to the Open Meeting Act is necessary to provide the Office of Open Government and intermediary option to enforce compliance with the OMA (similar to the Ethics Office), before seeking injunctive relief in D.C. Superior Court. An amendment is also needed to clarify whether the public body should be fined for non-compliance or respective members for non-compliance.

C. Boards and Commissions Central Calendar Migration

The project to migrate the boards and commissions central calendar to the OPEN-DC.GOV site has begun. We are still working with a less than complete list of boards and commissions; however, I was contacted last week by MOTA Director, Steven Walker, who says he was unaware that OOG still needed the information. His deputy has been directed to review the list and email me the requested info.

D. Trainings

Since the last board meeting, I have conducted an OMA training with the Rental Housing Commission, and a combined OMA/Ethics trainings via MOTA. I have conducted three FOIA trainings with Department of Consumer and Regulatory Affairs, OAG and the Contract Appeals Board.

E. Public Outreach

It has been a busy month for outreach. I have/will participate in several panel discussions. I participated in a web panel on Feb 12th with the Sunlight foundation on What Works in Cities; with Open Data Day DC on March 4th; at the Newseum on March 11th; and will appear on a panel for Sunshine Week/Open Government Coalition Summit at the National Press Club on March 15th.

I also made the rounds with a few of the Councilmembers who agreed to be briefed on the Strengthening Transparency and Open Access to Government Amendment Act of 2016. I have briefed Councilmembers Allen and Nadeau, and a staffer with Councilmember McDuffie's office.

V. Report by the Director of Government Ethics

- a. Update on Status of Office of Government Ethics (OGE) Operations – Recap of previous month’s activities (statistics)

	Current	Last month
Investigations Opened:	14	2
Investigations Closed:	6	6
Investigations Currently Open:	20	10
Investigations Stayed (Inactive):	15	14

- b. Publication and Reporting Obligations, including the quarterly Complaint Report

The Formal Opinion concerning Outside Activities and whether the “substantially related” prohibition is triggered was published in the D.C. Register on Friday, February 19th. The Quarterly Complaint report will be published in April.

- c. Trainings

- i. Attended by staff – 6,
Attorneys Flowers and Grimaldi attended an employment law update course offered by the DC Bar. Attorney Grimaldi attended a training session for ADA Coordinators. Attorney Flowers attended a drafting committee meeting of the Uniform Law Commission on a proposed Employee and Student Online Privacy Act (previously Social Media Privacy Act). Attorney Cooks attended the last two parts of the Trial Skills Clinic, a three part series offered by the D.C. Bar, using material developed by the National Institute of Trial Advocacy.
- ii. Conducted by staff – 16 since the last meeting (up from 7 last month). Trainings conducted included two full 2-hour monthly ethics training sessions, three New Employee Orientation, which included MSS training sessions. We also conducted two ethics trainings for DCRA’s third party inspection contractors, two trainings for the Office of the Attorney General, one for lawyers and one for their nonlawyer staff, two Board and Commission trainings, one at the Department of Insurance, Securities and Banking, and one at the DC Retirement Board. We already have several pending requests for the next few weeks, including a request from the United Medical Center/Not-for-Profit Hospital.

We are still holding regular IT and budget meetings as well as monthly meetings with the Office of the Inspector General.

- d. Advisory Opinions/Advice – There were no requests for formal advisory opinions since the last meeting.

Informal Advice: 66 up from 38 last month. This does not include the advice queries that were answered in connection with the recent lobbyist filing deadline.

e. Ethics Legislation/ Comprehensive Code of Conduct

- 1) There has been no measurable progress on the Comprehensive Code of Conduct and getting it to a committee vote. A Council staffer has been assigned to work toward helping to move the legislation out of committee, and we have met with the individual, but it at the moment Council oversight hearings and budget hearings seem to be the priority. There has been some press inquiry and I have reiterated to one reporter how important it is that the legislation be enacted.

f. Rulemaking

- 1) Changes to the Rules of the Board of Ethics and Government Accountability. We met in 5 weekly working sessions since the last meeting. We reviewed each chapter of our rules section by section and have only one remaining chapter – 59 on Dispositions before preparing a redline version for the Board’s review. During the review, we determined that a number of rules would be affected by the adoption of the Comprehensive Code of Conduct legislation that is pending before the Council.

g. Budget - The following dates are reminders of relevant budget dates for the next few months:

- 1) Hearing on BEGA’s FY17 Budget before the Committee on the Judiciary is scheduled for April 14.
- 2) The target date for Council consideration of the FY17 Budget Request and Budget Support Act is May 17, 2016.

h. Staffing and vacancy announcements

- 1) We have initiated the process of filling the vacant attorney position.

i. Lobbyist/Financial Disclosure Matters

- 1) Lobbyists- Last Friday we alerted the remaining lobbyists, lobbying entities, and clients (7) who had failed to file their required January 2016 Lobbyist Activity Reports that they were not in compliance and that they had been fined \$300 for failing to file the reports.
- 2) Financial Disclosure –We sent a Memo regarding financial disclosure filing to all ethics counselors on Friday February 12th. This memo discussed who should file which forms and informed agencies of their

reporting obligations to BEGA. We also held two training sessions for agency ethics counselors on the specific subject of “Who is a Filer?” These trainings were very well attended and the powerpoint presentation from the training is available on our website.

Agencies were required to submit a list of public filers to BEGA by March 1st. To date, most agencies have reported. Already we have seen a substantial increase in the number of designated public filers over the number that was reported last year. This is an indication to us that our training and outreach efforts are having an effect and that agency officials are better understanding FDS filing requirements.

The newly designed FDS form is in the final stages of testing and is getting very positive reviews. We will be opening the FDS Electronic Filing system in the coming days to allow for early submissions. This year will be sending filing reminders to public filers via email AND U.S. Mail.

j. Non-Confidential Investigations

- 1) #1251-001 – *In re: Chad Kee*. Mr. Kee worked for OSSE, where he administered a vendor contract. After meeting the vendor’s CEO, Kee discussed a consultant position with the vendor, which he ultimately received. The investigation revealed that he attended trainings with the vendor related to his consultant work, on OSSE work time and once hired by the vendor, attended meetings at OSSE on behalf of the vendor in violation of the postemployment rules. Respondent entered into a negotiated disposition, in which he agreed to pay \$15,000. To date he is without employment and has paid only \$500. As you can see from his email in the drop box he is delinquent because he is unemployed but expects to catch up by mid-March. The question is do we give him more time or refer to OAG. The Board decided to give the respondent a little more time to catch up with payments and to take the matter up again at the April Board meeting.
- 2) #1310-001 *In Re Leslie Mejia* – payment extension. On February 10, 2016, the Board approved an addendum to the Negotiated Disposition approving a revised payment schedule for Respondent. Respondent will now pay the \$1,000 balance of her fine in \$250 monthly installments, with payments to begin no later than August 16, 2016.

VI. Opportunity for Public Comment

No comment from the public. The Open Meeting ended at ____ pm.

VII. Executive Session (non-public) to Discuss Ongoing, Confidential Investigations pursuant to D.C. Official Code § 2-575(b), to deliberate on a decision in which the Ethics Board will exercise quasi-judicial functions pursuant to D.C. Official Code § 2-575(b)(13), and Personnel matters pursuant to D.C. Official Code § 2-575(b)(10).

The Executive Session meeting began at 1:45pm and ended at ____ pm.

VIII. Resumption of Public Meeting

a. Discussion of any remaining public items

Chairman Spagnoletti announced that the Board had approved a negotiated disposition in BEGA preliminary investigation #1453-001-*In Re: David Garber*. Respondent admitted that he violated D.C. Official Code § 1-1171.02(a)(3) (the local Hatch Act), when he filed as a candidate in the At-large Council race while he was employed as a part-time substitute teacher. He agreed to pay \$1,000 and left his position as a substitute teacher on March 7, 2016. He will pay \$250.00 on March 18, 2016, and \$750.00 on May 31, 2016.

IX. Adjournment

Having no further business, the Meeting adjourned at 2:45 pm.